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defect in the goods is one which cannot be easily discerned, acceptance never bars the buyer's right of action. *Buffalo Barbwire Co. v. Phillips*, 67 Wis. 129, 30 N. W. 295; *Miller v. Moore*, 83 Ga. 684, 10 S. E. 360; *Bell v. Mills*, 78 N. Y. App. Div. 42, 80 N. Y. Supp. 34. Where the defect is apparent, if the warranty is clearly express, the right to sue will survive a mere acceptance. *Day v. Pool*, 52 N. Y. 416; *Shupe v. Collender Co.*, 56 Conn. 489, 15 Atl. 405. The same rule applies where the warranty is implied or arises from the description of the goods, provided the sale is executed. *Munford v. Kevil*, 109 Ky. 246, 58 S. W. 703. But where title has not passed, considerable authority maintains that the buyer's right is destroyed by the mere acceptance of the goods. *Day v. Mapes-Reeve Construction Co.*, 174 Mass. 412, 54 N. E. 878; *Reed v. Randall*, 29 N. Y. 358. See *Gaylord Mfg. Co. v. Allen*, 53 N. Y. 515, 519. *Contra*, *English v. Spokane Commission Co.*, 48 Fed. 196. See *Watson v. Bigelow Co.*, 77 Conn. 124, 130, 58 Atl. 741, 742. The delivery of title to unspecified goods which do not correspond with the warranties of the contract, it is true, furnishes valid consideration to support an accord and satisfaction. See 19 HARV. L. REV. 208. But it is submitted that no waiver of the buyer's rights can occur unless he accept the defective performance as full satisfaction of the seller's obligation, which is by no means a necessary result of accepting defective performance. The question is therefore one of fact to be left to the jury in each case. See *Morse v. Moore*, 83 Me. 473, 481, 22 Atl. 362, 364. However, the failure to make protest within a reasonable time is strong evidence that the goods were received in full satisfaction, and the Sales Act, to obtain commercial certainty, has made such delay an absolute bar to recovery. See WILLISTON, SALES, § 484.

SCHOOL BOARDS — INJUNCTION AGAINST ABUSE OF DISCRETION — POWER TO PASS RULE EXCLUDING MEMBERS OF TEACHERS' UNION FROM SCHOOLS. — The Chicago Board of Education appointed some seven thousand teachers, many of whom were members of the Chicago Teachers' Federation, and later passed a rule prohibiting membership in this Federation on the part of the teachers. A taxpayer's suit was instituted to obtain an injunction against the enforcement of this rule. *Held*, an injunction will issue. *People ex rel. Fursman*, 3163 Chic. Leg. News 66 (Superior Court of Cook County, Ill.).

On exactly similar facts an Ohio court issued an injunction which was violated and attacked collaterally. *Held*, that the inferior court had no power to issue the injunction. *Frederick v. Owens*, 60 Oh. L. Bull. 538, 35 Oh. Circ. Ct. 538.

In general courts are slow to review the acts of an administrative board, deeming it essential to successful administration that if the board act within its powers, its decisions, no matter how unfortunate, should be final. *Fitzgerald v. Harms*, 92 Ill. 372; *Lem Moon Sing v. United States*, 158 U. S. 538; *United States v. Ju Toy*, 198 U. S. 253. School boards are given large discretion in the matter of hiring and dismissing teachers, the statutes generally providing that a teacher "may be dismissed for cause." See, for example, ILL. REV. STAT., ch. 122, §§ 133, 161. The right of the teacher to have written notice of the charge and to be heard in his defense gives that publicity which is an essential feature of administrative control. As the membership of teachers in a federation is conceivably productive of some slight degree of insubordination in the schools, it would seem to be a possible cause for dismissal. With this established, the fact that a school board acted unwisely in exercising its discretion, cannot give equity power of review. However, Illinois has previously gone to an unusual length in this direction. *Adams v. Brennan*, 177 Ill. 194, 52 N. E. 314. But elsewhere courts generally refuse to review the decisions of school boards in matters of discretion. *Lane v. Morrill*, 51 N. H. 422; *Wharton v. School Directors*, 42 Pa. St. 358; *Hysong v. School District*, 164 Pa. St. 629, 30 Atl. 482. Again, it is to be noted that the taxpayer's bill in the Chicago case

alleged only that the enforcement of the rule complained of would so disorganize the schools that taxes would be dissipated without adequate return. Though taxpayers' bills are numerous in Illinois they have heretofore been based on a certain injury to the taxpayer. *Board of Education v. Arnold*, 112 Ill. 11; *Martin v. Jamison*, 39 Ill. App. 248. See *Fitzgerald v. Harms*, 92 Ill. 372, 375. While the Chicago teachers have gained a temporary advantage over a blundering school board, the entrance of a court of equity into the field is unfortunate.

**SURETYSHIP — SURETY'S DEFENSES — BANK'S FAILURE TO SET OFF CLAIM AGAINST PRINCIPAL DEBTOR.** — An accommodation note was indorsed to the plaintiff bank at which it was made payable. The bank with knowledge of the accommodation permitted the accommodated indorser to withdraw deposits made after the maturity of the note and sufficient to cover it. It now sues the accommodation maker. *Held*, that it cannot recover. *Tatum v. Bank*, 69 So. 508 (Ala.).

At common law, the holder of a bill or note who has knowledge of the suretyship of one party for another has a duty of equitable conduct toward the surety, on pain of discharging him. *Laxton v. Peat*, 2 Campb. 185; *Ewin v. Lancaster*, 6 B. & S. 571; *Valley Nat. Bank v. Meyers*, 17 N. B. R. 257. In some states it is a breach of that duty for a bank which holds accommodation paper to permit the accommodated party to withdraw sums on deposit at or after maturity of the instrument. *McDowell v. Bank*, 1 Harrington (Del.) 369, 382, 383; *Pursifull v. Bank*, 97 Ky. 154, 30 S. W. 203. See 2 MORSE, BANKS AND BANKING, 4 ed., § 563; 9 HARV. L. REV. 146. But, by the weight of authority, the surety is not discharged by a mere failure to retain such deposits, as he would be if the bank released a mortgage or pledge to which he might be subrogated. *Glazier v. Douglass*, 32 Conn. 393; *Davenport v. Bank*, 126 Ga. 136, 54 S. E. 977; *Citizens' Bank v. Booze*, 75 Mo. App. 189. Whether the right is regarded as a lien, as in the principal case, or as a set-off, it is well settled that the surety cannot be subrogated to the right of the bank to retain the deposit. See *Davenport v. Bank*, *supra*, 146; *Pursifull v. Bank*, *supra*. See SHELDON, SUBROGATION, § 124. But, although no right of subrogation is destroyed, the bank, by failing to exercise its right of set-off, which would have afforded a simpler means of satisfying the debt than would be afforded by a pledge, mortgage, or lien, has prejudiced the surety's interests as much as if it had surrendered a security on which it held a specific lien. *McDowell v. Bank*, *supra*; *Pursifull v. Bank*, *supra*; *Law v. East India Co.*, 4 Ves. 824. Under this view it should make no difference whether the deposits were made before or after the maturity of the note. *McDowell v. Bank*, *supra*; *Bank of Taylorville v. Hardesty*, 91 S. W. 729 (Ky.). See *Davenport v. Bank*, *supra*, 144. Cf. *People's Bank v. Legrand*, 103 Pa. St. 309; *Commercial Bank v. Henginger*, 105 Pa. St. 496. And it is also immaterial whether the principal debtor is maker or indorser, provided the real relationship between the parties is known to the bank. *Ewin v. Lancaster*, *supra*; *Guild v. Butler*, 127 Mass. 386. Accordingly, the principal case seems correct in holding that the bank should be compelled to make the set-off against the account of the depositor. The court did not have to decide whether the Negotiable Instruments Law would affect the correctness of this result, because the statute of the sister state where the note was payable was not pleaded.

**TAXATION — CONSTITUTIONAL RESTRICTION: UNIFORMITY — MORTGAGE REGISTRY TAX.** — A Kansas statute imposed a tax on mortgages when recorded, making those not recorded unenforceable, and exempting those recorded from the general property tax. The former small registry fee was also continued. *Held*, that the tax violates the constitutional requirement of "a